



July 9, 2014

## **EX PARTE PRESENTATION**

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12<sup>th</sup> Street, SW Washington, DC 20554

Re: Ex Parte Presentation in MB Docket No. 14-57, Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations; MB Docket No. 14-90, Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations; AU Docket No. 14-78, Auction of Advanced Wireless Services Licenses Scheduled for November 13, 2014; Comments Sought on Competitive Bidding Procedures for Auction 97; GN Docket No. 12-268, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

## Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network Corporation ("DISH") submits this letter summarizing the following meetings on Monday, July 7, 2014:

- A meeting with Chairman Tom Wheeler; Philip Verveer, Senior Counselor for Chairman Wheeler; Renee Gregory, Legal Advisor, Engineering and Technology, Wireless, and Incentive Auctions for Chairman Wheeler; William Lake, Chief, Media Bureau; and Roger Sherman, Chief, Wireless Telecommunications Bureau. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President; Jeffrey Blum, Senior Vice President and Deputy General Counsel; and Alison Minea, Director and Senior Counsel.
- A meeting with Commissioner Mignon Clyburn; Adonis Hoffman, Chief of Staff and Senior Legal Advisor, Media for Commissioner Clyburn; and Louis Peraertz, Legal Advisor, Wireless, International, and Public Safety for Commissioner Clyburn (by telephone). Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President; Jeffrey Blum, Senior Vice President and Deputy General Counsel; and Alison Minea, Director and Senior Counsel.
- A meeting with Commissioner Jessica Rosenworcel; David Goldman, Senior Legal Advisor for Commissioner Rosenworcel; and Clint Odom, Policy Director for Commissioner Rosenworcel. Present on behalf of DISH were Charlie Ergen, Chairman;

- Thomas Cullen, Executive Vice President; Jeffrey Blum, Senior Vice President and Deputy General Counsel; and Alison Minea, Director and Senior Counsel.
- A meeting with Commissioner Ajit Pai; Matthew Berry, Chief of Staff for Commissioner Pai; Brendan Carr, Legal Advisor, Wireless, Public Safety, and International for Commissioner Pai; Daniel Graulich, Law Clerk; and Andrew Merson, Law Clerk. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President; Jeffrey Blum, Senior Vice President and Deputy General Counsel; and Alison Minea, Director and Senior Counsel.
- A meeting with Commissioner Michael O'Rielly and Erin McGrath, Legal Advisor, Wireless, Public Safety, and International for Commissioner O'Rielly. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President; Jeffrey Blum, Senior Vice President and Deputy General Counsel; and Alison Minea, Director and Senior Counsel.
- A meeting with Roger Sherman, Chief, Wireless Telecommunications Bureau; John Leibovitz, Deputy Chief, Wireless Telecommunications Bureau (by telephone); Michael Janson, Legal Advisor, Wireless Telecommunications Bureau; and Patricia Robbins, Legal Advisor, Wireless Telecommunications Bureau. Present on behalf of DISH were Charlie Ergen, Chairman; Thomas Cullen, Executive Vice President; Jeffrey Blum, Senior Vice President and Deputy General Counsel; Mariam Sorond, Vice President, Technology Development; and Alison Minea, Director and Senior Counsel.

During the meetings, DISH said that it plans to participate in the upcoming AWS-3 auction, and we reiterated that the public interest and FirstNet funding would be best served if the Commission adopts separate bidding eligibility, activity waivers, and auction stopping rules for the different spectrum bands available in the AWS-3 auction (Auction 97). The 1695-1710 MHz licenses and the 1755-1780/2155-2180 MHz band licenses appear to not be interchangeable in terms of their characteristics and likely uses, and it is thus unlikely that the two bands offer licenses that could be used as close substitutes. As discussed in DISH's comments, policy and auction precedent demonstrate that, given that the licenses for the two bands are not substitutes, there is no legitimate, pro-competitive reason for the Commission to combine bidding eligibility, activity waivers, and auction stopping rules.<sup>2</sup> And there is a significant downside to doing so. If bidding eligibility is interchangeable between the two bands, there is an anti-competitive strategic reason to shift eligibility back and forth. A bidder could accomplish this using a recognized strategy called "parking," which generally involves a bidder bidding on items they have little interest in winning during the first part of an auction to draw attention away from the licenses they are interested in, and then moving to their real interests late in the auction. In the context of Auction 97, strategic parking could be used to disadvantage smaller competitors and new entrants, and it may diminish interest in specific bands.<sup>3</sup>

<sup>&</sup>lt;sup>1</sup> DISH Network Corporation Comments, AU Docket No. 14-78 (June 9, 2014).

<sup>&</sup>lt;sup>2</sup> *Id.* at 9-12.

<sup>&</sup>lt;sup>3</sup> *Id.* at 8.

DISH also explained that it looks forward to meaningfully participating in the upcoming 600 MHz Broadcast Incentive Auction ("incentive auction"). The incentive auction offers opportunities for competitive providers and new entrants to bid on and win much-needed low-band spectrum, which will facilitate the deployment of mobile broadband services. The framework established in the *Report and Order*<sup>4</sup> offers a win-win for broadcasters to generate revenue and continue to broadcast over the air, while ensuring that consumers will benefit from more robust competition among wireless carriers.

In addition to the two upcoming auctions, DISH also discussed the changing nature of the pay-TV and broadband industries in light of growing industry consolidation. The ability for DISH and other non-dominant players to compete in the broadband and video markets will be impacted by how the Commission responds to the mergers before it.

The pending Comcast/Time Warner Cable ("TWC") merger presents serious competitive concerns for the broadband and video marketplaces and therefore should be denied. There do not appear to be any conditions that would remedy the harms that would result from the merger. High-capacity cable broadband connections are the lifeblood of over-the-top ("OTT") video services. Among other things, the combined company would have an increased incentive and ability to leverage its control over the broadband pipe to undermine these services. Comcast/TWC will have at least three 'choke points' in the broadband pipe where it can harm competing video services: the last mile 'public Internet' channel to the consumer; the interconnection point; and any managed or specialized service channels, which can act as high speed lanes and squeeze the capacity of the public Internet portion of the pipe. Each choke point provides the ability for the combined company to foreclose the online video offerings of its competitors. In addition, a combined Comcast/TWC will be able to exercise its enormous size to leverage programming content in anti-competitive ways. It will be able to extract lower prices from programmers, which, in turn, will force programmers to extract even higher rates from smaller pay-TV providers like DISH in order to compensate the programmers for lost revenue. And a combined Comcast/TWC will have the incentive and ability to restrict programmers' ability to grant digital rights to competing pay-TV and OTT video providers.

DISH also explained that the recently announced AT&T/DIRECTV transaction presents competitive concerns. Among other things, AT&T and DIRECTV will also be able to combine their market power to leverage programming content, to the potential detriment of consumers.

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<sup>&</sup>lt;sup>4</sup> See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, GN Docket No. 12-268 (rel. June 2, 2014).

## Respectfully submitted,

/s/ Jeffrey H. Blum Jeffrey H. Blum

cc: Philip Verveer

Renee Gregory

Adonis Hoffman

Louis Peraertz

David Goldman

Clint Odom

Matthew Berry

Brendan Carr

Erin McGrath

William Lake

Roger Sherman

John Leibovitz

Michael Janson

Patricia Robbins

Daniel Graulich

Andrew Merson